

## **AGREEMENT**

AGREEMENT made this \_\_\_\_ day of April, 2015, by and between the TOWN OF MANCHESTER (the Town), a municipal corporation, with principal offices located in the Town of Manchester, Bennington County, Vermont, and the COMMUNITY FOOD CUPBOARD (CFC), a tax-exempt, not-for-profit Vermont corporation, with principal offices located in the Town of Manchester, Bennington County, Vermont.

### WITNESSETH:

WHEREAS, the Town owns and operates the Manchester Town Hall located at 6039 Main Street in the Town of Manchester (the Facility); and,

WHEREAS, the Facility is primarily used to house the administrative offices of the Town Manchester, including the Town Manager's Office, Town Clerk's Office, Finance Office, Planning and Zoning Office and Assessing Office and to conduct elections and public meetings; and,

WHEREAS, the Town provides significant in-kind aid to the CFC, including a significantly discounted lease, heat and electricity; and,

WHEREAS, the CFC occupies 600 square feet, or approximately six (6) percent of Manchester Town Hall; Town Hall is approximately 11,100 square feet; and,

WHEREAS, the Town of Manchester spent \$37,983 in Fiscal Year 2014 on utilities for Town Hall, including water, electricity and heat, including the space occupied by CFC; and,

WHEREAS, the CFC operates an 80 square foot walk-in freezer and four freezers in the space provided by the Town; and,

WHEREAS, the Town estimates that the freezers operated by the CFC cost approximately \$400.00 per month (or \$4,800 per year) in electricity to operate; and,

WHEREAS, the CFC provides services to the residents of the towns of Danby, Dorset, Jamaica, Landgrove, Londonderry, Manchester, Middletown Springs, Mount Tabor, Pawlet, Peru, Rupert, Sandgate, Weston, Winhall (including Bondville) and Wells, with a combined population of 16,984; and,

WHEREAS, the Town of Manchester constitutes 4,345 of the 16,984 residents of the CFC service area or approximately 26%; and,

WHEREAS, the CFC does not receive any direct or indirect aid from the other municipalities it serves; and,

WHEREAS, the Town estimates that fair market rent for similar space is approximately \$10 per square foot for 600 square feet, thereby equating to an in-kind contribution of approximately \$7,200 per year, plus utilities; and,

WHEREAS, the parties wish to enter into an Agreement governing the terms and conditions upon the space provided by the Town to CFC through June 30, 2018;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and value consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. The CFC agrees to provide services, including but not limited to providing nutritious food to individuals and families in need of assistance based on the guidelines adopted by the CFC, to eligible residents of the Town of Manchester through the terms of this lease.

2. The Town shall allow the CFC to continue to occupy during the term hereof its currently occupied space, approximately 600 square feet, in the Facility in the space of the former "shop room" in the southwest corner of Town Hall and the closet that is accessible from the "shop room" for the purpose of distributing food to individuals and families in need.

3. Notwithstanding any other section to the contrary, this agreement may be terminated by either party upon 90 days notice.

4. In order to ensure effective communication between the Town and CFC, all communication between the Town and CFC shall be done by the CFC administrator and/or chair of the CFC board of directors and the town manager and/or operations director.

5. From May 1, 2015 to June 30, 2016, CFC agrees to pay the Town \$1,000.00 per month in rent for use of the space noted in paragraph 2. Rent shall be due on or before the first day of each month; provided, however, if CFC does not receive any other funding from the Town of Manchester in the form of a Town Meeting voted appropriation the Town agrees to reduce the rent otherwise due from \$1,000 per month to \$100.00 per month.

6. July 1, 2016 to June 30, 2017, CFC agrees to pay the Town \$1,250.00 per month in rent for use of the space noted in paragraph 2. Rent shall be due on or before the first day of each month; provided, however, if CFC does not receive any other funding from the Town of Manchester in the form of a Town Meeting voted appropriation the Town agrees to reduce the rent otherwise due from \$1,250 per month to \$125.00 per month.

7. From July 1, 2017 to June 30, 2018, CFC agrees to pay the Town \$1,500.00 per month in rent for use of the space noted in paragraph 2. Rent shall be due on or before the first day of each month; provided, however, if CFC does not receive any other funding from the Town of Manchester in the form of a Town Meeting voted appropriation the Town agrees to reduce the rent otherwise due from \$1,500 per month to \$150.00 per month.

8. Distribution of food to patrons shall be done one and one-half days per week. CFC will distribute food during regular work hours, Monday through Friday, 8:00 AM to 4:30 PM, except holidays recognized by the Town. The time and date of food deliveries may vary.

9. CFC patrons shall be prohibited from queuing or gathering in the hallway of Town Hall more than fifteen (15) minutes before the scheduled distribution of food. CFC will require patrons to queue so that patrons do not block the hallway or hinder the flow of pedestrian traffic in the hallway. CFC agrees to take necessary steps to enforce this clause.

10. CFC shall be responsible for managing vehicle and pedestrian traffic of employees, volunteers and patrons. CFC shall be responsible for the conduct of its employees, volunteers and patrons, including any damage caused by its employees, volunteers and patrons. The Town may, at its sole discretion, limit or prohibit access by employees, volunteers and patrons who do not adhere to the rules and regulations of the Town or cause disturbances.

11. CFC shall not distribute food to patrons on election days and whenever Town Hall hosts large public meetings or events. The town manager or his designee shall notify the CFC of any such meetings or events at least seven days in advance.

12. CFC shall take reasonable steps to maintain energy efficiency in the space it occupies at Town Hall, which shall include limiting the amount of time that the exterior doors are open and installing and maintaining equipment that is energy efficient.

13. CFC shall maintain and, as reasonably necessary, repair the Occupied Space, including electrical, lighting, walls and painting and flooring, finishes, shelving, plumbing, all doors and door hardware, appliances including refrigeration and freezers, mechanicals and any other systems that are exclusive to the Occupied Space. CFC shall also be responsible for cleaning and maintaining the Occupied Space in a neat and orderly manner, disposal of any garbage, composting materials, recycling and spoiled food in a timely manner, and generally keeping the Occupied Space in a state of good working condition. CFC agrees to maintain the shared hallway or bathrooms whenever its operation specifically causes dirt or debris to accumulate in the hallway or bathrooms or otherwise requires cleaning.

14. CFC agrees to repair or reimburse the Town for any and all damage caused by its operation, employees, volunteers and patrons beyond reasonable wear.

15. CFC shall be solely responsible for payment of telephone service and repairs associated its operations.

16. CFC agrees to maintain exterior space in a neat and orderly manner, and maintain the concrete walkway between the back door and parking lot, including clearing snow, ice and other debris, and keeping trash, boxes and other materials in a secure and safe location.

17. The Town shall maintain and, as reasonably necessary, repair the exterior of the Facility, including the roof and façade, as well as the foundation and other structural elements, as well as shared systems such as the heating system, domestic hot water, exterior lighting, paved areas (but not walkways exclusive to CFC or otherwise addressed in section 16), and sewer disposal system. The Town shall have no obligation to maintain or repair the plumbing or electrical service located within the Occupied Space.

18. CFC shall not make any structural changes or modifications to the Occupied Space without the prior written consent of the town manager.

19. In the event that the Facility or the Occupied Space is destroyed, impaired or altered by forces or events beyond the control of the Town, the Town shall have the option to terminate this Agreement without penalty or any liability to the CFC; or the Town may elect, in its sole discretion, to restore the Occupied Space or the

Facility. The Town shall give written notice to CFC of any election to restore the Occupied Space of the Facility within 30 days of such casualty, and shall work cooperatively with CFC to facilitate operations during any period of restoration.

20. The Town shall be granted access for legitimate purposes of repair, inspection, maintenance or other customary landlord functions or purposes.

21. CFC shall maintain during the term hereof general liability insurance in the minimum amount of \$1,000,000. CFC shall maintain the Town as an additionally insured on its insurance policies during the term hereof, and promptly furnish proof of such coverage to the Town upon request. Except as may otherwise be agreed in writing between the parties, CFC shall be responsible for providing all insurance in connection with its operations, as it related to its patrons, as well as in connection with all its equipment, papers personal property and leasehold improvements at the Facility.

22. The Town shall not be responsible for the hiring, employment policies or the relationship between the CFC and its employees, volunteers and patrons. The CFC is not an agent of the Town, and this is not a partnership or joint venture agreement.

23. In the event of a breach of this Agreement, either party may exercise any remedy available at law or in equity. A breach by CFC shall include, but not be limited to, failure by CFC to promptly pay all funds due hereunder; to maintain insurance as specified; and/or to maintain the Facility in accordance with the standards set forth herein. No failure by the Town to insist upon strict performance by CFC of terms or conditions of this Agreement shall be deemed a waiver of the Town's rights hereunder.

24. Unless sooner terminated for breach or provided for herein, this Agreement shall terminate on June 30, 2018. At the termination of this Agreement, the CFC shall have vacated the Occupied Space and shall have removed all equipment and tangible personal property, time being of the essence. All capital improvements paid for by CFC with respect to the Occupied Space shall remain the sole property of the Town. The CFC hereby waives the right to remove any and all fixtures in the Occupied Space.

25. Any dispute arising hereunder shall be subject to binding arbitration. Any dispute subject to arbitration shall be presented to arbitrator mutually selected by the parties, which Arbitrator shall be

instructed to endeavor to deliver, within 60 days thereafter, a final, binding and conclusive decision upon each of the parties. In the event that the parties cannot agree on the selection of an arbitrator within 20 days after service of a written demand for arbitration, either party may request the American Arbitration Association to appoint an arbitrator, and such appointment shall be final, binding and conclusive on the parties. The arbitrator's decision shall be final, binding and conclusive on all parties. The parties shall cooperate with each other, and each other's representatives and with the arbitrator in order that any and all matters in dispute shall be resolved as soon as practicable. Unless otherwise agreed in writing by the parties, the arbitration shall take place in Manchester, Vermont. The fees, costs and expenses of such arbitrator incurred in connection therewith shall be shared equally between the parties unless ordered otherwise by the arbitrator. Nothing herein shall limit the jurisdiction of a court to offer appropriate equitable relief pending a final arbitration order, or to enforce a final arbitration order.

26. Any provisions of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provisions hereof and such other provisions shall remain in full force and effect.

27. This Agreement shall be governed by the laws of the State of Vermont.

28. This Agreement contains all of the agreements of the parties hereto with respect to matters covered or mentioned in this Agreement and no prior agreement, letters, representations, warranties, promises, or understandings pertaining to any such matters shall be effective for any such purpose. Any and all prior agreements are hereby superseded. This Agreement may be amended or added to only by an agreement in writing signed by the parties hereto or their respective successors in interest.

#### **ACKNOWLEDGMENT OF ARBITRATION**

**I UNDERSTAND THAT THIS AGREEMENT CONTAINS AN AGREEMENT TO ARBITRATE. AFTER SIGNING THIS DOCUMENT, I UNDERSTAND THAT I WILL NOT BE ABLE TO BRING A LAWSUIT CONCERNING ANY DISPUTE THAT MAY ARISE WHICH IS COVERED BY THE ARBITRATION AGREEMENT, UNLESS IT INVOLVES A QUESTION OF CONSTITUTIONAL OR CIVIL RIGHTS. INSTEAD, I AGREE TO SUBMIT ANY SUCH CLAIM TO AN IMPARTIAL ARBITRATOR.**

IN WITNESS WHEREOF the parties have set their hands the day and year last above written.

IN THE PRESENCE OF:

COMMUNITY FOOD CUPBOARD

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Martha Carey, Administrator

TOWN OF MANCHESTER, VERMONT

\_\_\_\_\_  
Witness

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John P. O'Keefe, Town Manager